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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/822,248 | 04/08/2004 | Kevin J. Hopkins | 1372.002 | 1771 |
| 27353 | 7590 | 03/03/2006 | EXAMINER | |
| MELVIN K. SILVERMAN 500 WEST CYPRESS CREEK ROAD SUITE 500 FT. LAUDERDALE, FL 33309 | | | COE, SUSAN D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1655 | |

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

A: methylxanthine selected from caffeine, theobromine or a combination thereof;

B: herb composition selected from Couchgrass rhizome, Buchu leaf, Uva ursi leaf, Juniper berry [sic], Hydrangea root, Cornsilk stylus, or a specific combination thereof; and

C: topical vasodilator selected from hydroglycolic fluid extract of *Palmaria palmate*, Ergoloid mesylates, papaverine, isoxsuprine HCl, ethaverine HCl, isosorbide mononitrate, isosorbide dinitrate, or a specific combination thereof.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 15 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey, can be reached at (571) 272-0775. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information

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about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.



2-28-06

Susan D. Coe
Primary Examiner
Art Unit 1655